

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of TexasPaymentech, LLC, *et al.*,

Plaintiffs,

versus

Landry's Inc.,

Defendant.

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Civil Action H-18-1622

ENTERED

February 12, 2021

Nathan Ochsner, Clerk

Opinion on Dismissal

I. *Background.*

Paymentech, LLC, and JPMorgan Chase Bank, N.A., agreed to process the credit card payments made at properties owned by Landry's Inc. In December 2015, Landry's announced that data had been stolen from its credit card machines.

Visa and Mastercard – the payment brands – hired an independent company to investigate the security breach. The brands assessed the cost of the breach to JPMorgan under their contracts.

JPMorgan paid about \$20 million of assessments to Visa and Mastercard. Under their agreement, JPMorgan asked Landry's to indemnify it for the assessment. Landry's refused. JPMorgan sued Landry's for breaching its contract, and Landry's filed third-party complaints against Visa and Mastercard.

In its complaints, Landry's argues that it is an equitable subrogee to JPMorgan's breach of contract claims. As such, Landry's says it is entitled to reimbursement from the payment brands. Visa and Mastercard moved to dismiss, arguing that Landry's does not have standing to assert its claims.

2. *Standing.*

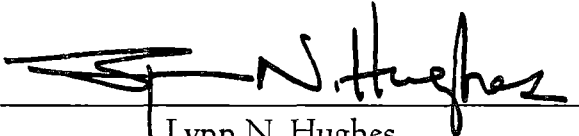
Landry's does not have standing to challenge the agreement between JPMorgan and the brands. The contract in this case is the one between Landry's and JPMorgan. That contract governs JPMorgan processing the payments made at Landry's. JPMorgan separately contracted with Mastercard and Visa – the assessments at issue in this case are created by this contract.

Landry's is not a party to the agreement between JPMorgan and the brands. Only the parties to a contract have the right to enforce its terms absent a third-party beneficiary or subrogation. Landry's is neither – it is not contemplated in the contract between JPMorgan and the brands. Landry's cannot challenge the assessment provision in the contract to which it is not a party.

3. *Conclusion.*

Visa and Mastercard will be dismissed.

Signed on February 12, 2021, at Houston, Texas.



Lynn N. Hughes
United States District Judge